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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,900	12/12/2000	Carlos O. Pinzon	05725.0595-00	5474

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WASHINGTON, DC 20001-4413

EXAMINER
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VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/733,900

Applicant(s)

PINZON ET AL.

Examiner

JYOTHSNA A. VENKAT Ph. D

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30,321,322,325,334,335,337,338 and 348-368 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30,321,322,325,334,335,337,338 and 348-354 is/are rejected.
- 7) ☒ Claim(s) 355-368 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt is acknowledged of remarks and exhibits 1-3 filed on 3/1/05. Claims 321-322, 325, 330, 334-335, 337-338 and 348-368 are pending in the application and the status of the application is as follows:

#### ***Claim Rejections - 35 USC § 103***

The rejection of claims 321-322, 325, 330, 334-335, 337-338, and 348-359 under 35 U. S. C. 103 over U. S. Patent '657 in view of U. S. Patents '324 and '483 is maintained for reasons of record.

#### ***Response to Arguments***

1. Applicant's arguments filed 3/1/05 have been fully considered but they are not persuasive.
2. Applicants argue that there is no teaching or suggestion in patent '657 that would have led the skilled artisan to add an oil-soluble cationic surfactant to the compositions therein to produce a cosmetic composition with "outstanding properties," as the Office alleges and therefore, it is illogical to assert that one of skill in the art would have been motivated to add an oil-soluble cationic surfactant to '657 with the expectation of reducing syneresis and one of skill in the art simply would not have been motivated to remedy a problem that the reference itself states does not exist in its compositions.
3. In response to the above argument, it is the position of the examiner that the patent '657 teaches the same polyamide polymers as gelling agents and at col. 14, lines 38-43 teaches the application of this gellant in various cosmetic personal care products and the patent '324 suggest the combination of the polyamide resin and also cationic surfactant and one of ordinary skill in

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the art would be certainly motivated to combine the ingredients. The patent at the paragraph bridging cols. 8-9 teaches to one of ordinary skill in the art that the composition can include blend of surfactants and the patent at col.10 definitely teaches to one of ordinary skill in the art that in addition to non-ionic surfactants, cationic or anionic surfactants can be used. Patent '324 teaches to one of ordinary skill in the art the advantages of using polyamide resin and blend of surfactants, which has the advantage of inhibiting hardening and loss of rub off availability. This loss of rub off availability is very popular among the consumer since these products are called "transfer resistant products". The patent '324 clearly teaches to one of ordinary skill in the art at col.2, the advantages for the consumer at col.2, lines 39-45.

4. Applicants point out that patent '324 fails to teach or suggest at least one cationic surfactant at all, but rather, states that the surfactant is optional (Col. 8, line. 66 to col. 9, line 2.) and the reference specifically states that non-ionic surfactants are preferred.

5. In response to the above argument, the patent at paragraph bridging cols 8-9 teaches to one of ordinary skill in the art that the compositions optionally and preferably include surfactant or blend of surfactants.

6. Applicants argue that the desire to obtain a composition with "outstanding properties," such as modifying viscosity and achieving a rich appearance as disclosed in '483 (See July 16, 2003, Office Action, pp. 4-5.) is due to the inventive oil-in-water emulsion which contains an ionic emulsifier (see col. 4, Ins. 45-52) and not specifically to the presence of an oil-soluble cationic surfactant as the Office implies.

7. In response to the above argument, it is the position of the examiner that the patent '657 teaches the specific structuring polymer as the gelling agents and the patent '324 teaches the

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combination of the polyamide resin (structuring polymer) along with cationic surfactants and the patent''483 teaches that the combination of non-ionic and cationic surfactants which can be oil soluble provide out standing properties. Therefore one of ordinary skill in the art would certainly be motivated to combine the structuring polymer and substitute the oil soluble cationic surfactant of '483 for the cationic surfactant in the compositions of '324 with the reasonable expectation of success that the compositions exhibit outstanding properties. The motivation to combine the ingredients flows logically from the art for having been used in the same cosmetic art. Therefore the subject matter as a whole is obvious within the meaning of 35 U. S. C. 103 over the combination of the patents '657, '324 and '483.

***Allowable Subject Matter***

8. Claims 356-368 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

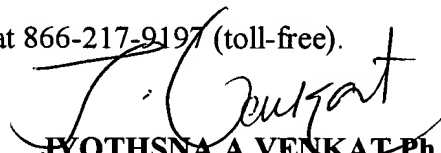
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30: 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K. PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**JYOTHSNA A VENKAT Ph. D**  
**Primary Examiner**  
**Art Unit 1615**

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